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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,887	03/25/2004	Robert T. Kissell	1255.1.001	6638

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EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/808,887		Applicant(s) KISSELL, ROBERT T.	
Examiner Bryon P. Gehman		Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 13-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/25/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 1, the term "and/or" is alternative and indefinite, as it is indefinite which meaning, "and" or "or" takes precedence. Also, a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the broad recitation "object", and the claim also recites "cylindrical tanks" which is the narrower statement of the range/limitation. See also line 6 and claim 2, lines 3-4. In lines 4-5, "being downwardly converging toward the other, parallel to one another," is indefinite, as portions that are

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converging toward one another would not be "parallel" to one another as stated. In lines 6 and 7, "the latter" is indefinite, as the latter would be "object".

In claim 2, lines 3-4, "said cylindrical tank or object" is indefinite, as it is not seen that claim 1, line 6 defines a "cylindrical tank or object" per se. Positively defined structure is "said", inferred imaginary structure is not.

Claim 12 contains the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a hook and loop fastener and, accordingly, the identification/description is indefinite.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ziaylek Jr. (4,391,377). Claims 1, 5-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Solo (3,501,018). Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Francis (3,392,682). Each discloses a holder for safely transporting or storing cylindrical objects, comprising an inwardly sloped first and second interior wall portions (22; 22; 30 and 32; respectively), the interior wall portions being downwardly converging toward each other in a lateral dimension and parallel to one another in a longitudinal dimension and rigidly held apart a distance sufficient to hold therebetween portions of the exterior sidewall of a cylindrical object, thereby retaining the object in a horizontal orientation.

As to claims 5-6 and 8, Solo discloses exterior wall portions (20; 20) and bottom segments (16, 16A) and a solid bottom portion (at 16b).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tyrseck (2,782,979) in view of Solo. Tyrseck discloses a holder for safely transporting or storing cylindrical objects, comprising first and second wall portions (15, 15). Solo discloses a holder for safely transporting or storing cylindrical objects,

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comprising an inwardly sloped first and second interior wall portions (22), the interior wall portions being downwardly converging toward each other in a lateral dimension and parallel to one another in a longitudinal dimension and rigidly held apart a distance sufficient to hold therebetween portions of the exterior sidewall of a cylindrical object, thereby retaining the object in a horizontal orientation. To modify the holder of Tyrseck employing inwardly sloped wall portions as taught by Solo would have been obvious in order to position a cylindrical object in a position across its axis, as disclosed by Solo.

As to claim 2, Tyrseck discloses front and back wall portions as claimed.

As to claims 3 and 7, Tyrseck and Solo each disclose an open bottom portion as a space between the stored object and the holder.

As to claims 5 and 6, Solo discloses the arrangement of interior (22) and exterior (20) wall portions with bottom segments secured therebetween to maintain the configuration of the wall portions.

As to claim 8, Tyrseck and Solo further disclose a solid bottom to the holder.

As to claim 9, Tyrseck discloses providing a holder from a single piece of material.

As to claims 10 and 11, to comprise the holder from various workable materials would have been within the level of ordinary skill in the art.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 2 above, and further in view of either one of Princiotta et al. (5,709,252) and Millet (5,950,831). Princiotta et al. and Millet each disclose providing a holder for a

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cylindrical container where the front portion is higher than the back portion, in order to present the opening of the cylindrical container for access to a user. To modify the holder of the prior art combination to provide structure to raise the front of the cylindrical container would have been obvious in view of either one of Princiotta et al. and Millet in order to present the opening of the cylindrical container for access to a user.

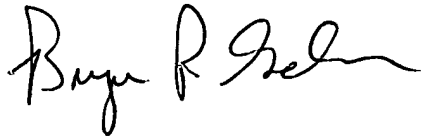
8. Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. Dependent claims 13-20 would also then be allowable.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are holders for cylindrical objects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent.

Bryon P. Gehman
Primary Examiner
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BPG